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(1)
 (2) UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK
 (3) -----X
 JUDITH H. WEISS,
 (4)
 PLAINTIFF,
 (5)
 (6) -against- Case No:
 07CV5712
 (7)
 (8) FRANCES M. CREEM and BETTY OLSON,
 (9) DEFENDANTS.
 -----X

(10)

(11) DATE: October 26, 2007

(12) TIME: 10:00 a.m.

(13)

(14) EXAMINATION BEFORE TRIAL of the
 (15) Plaintiff, JUDITH H. WEISS, taken by the
 (16) Defendants, pursuant to a Court Order, held
 (17) at the offices of FRIEDMAN, FRIEDMAN,
 (18) CHIARAVALLOTTI & GIANNINI, ESQS., 2 Rector
 (19) Street, 21st Floor, New York, New York 10006,
 (20) before a Notary Public of the State of
 (21) New York.

(22)

(23)

(24)

(25)

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(1)

(2) APPEARANCES:

(3)

(4) FRIEDMAN, FRIEDMAN, CHIARAVALLOTTI
 & GIANNINI, ESQS.
 (5) Attorneys for Plaintiff
 2 Rector Street, 21st Floor
 (6) New York, New York 10006
 BY: MARIANGELA CHIARAVALLOTTI, ESQ.

(7)

(8)

(9) DESENA & SWEENEY, LLP.

Attorneys for the Defendant

(10) FRANCES M. CREEM

1383 Veterans Memorial Highway

(11) Suite 32

Hauppauge, New York 11788

(12) BY: SHAWN O'SHAUGHNESSY, ESQ.

(13)

(14) LAW OFFICE OF JAMES G. BILELLO & ASSOCIATES
 (15) Attorneys for the Defendant
 BETTY M. OLSON
 (16) 875 Merrick Avenue
 Westbury, New York 11590
 (17) BY: JOHN W. KONDULIS, ESQ.

(18)

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(23)

(24)

(25)

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(1)

(2) JUDITH H. WEISS, called as a
 (3) witness, having been first duly sworn by a
 (4) Notary Public of the State of New York, was
 (5) examined and testified as follows:

(6) EXAMINATION BY

(7) MR. O'SHAUGHNESSY:

(8) Q. Please state your name for the
 (9) record.

(10) A. Judith Hannah Weiss.

(11) Q. Where do you reside?

(12) A. 595 Old Drivers Hill Road,
 (13) Scottsville, Virginia, 24590.

(14) Q. Good morning, Miss Weiss. My name
 (15) is Shawn O'Shaughnessy. I'm with the firm of
 (16) DeSena & Sweeney. We represent one of the
 (17) defendants in this action. I'm going to be
 (18) asking you a series of questions this morning.

(19) If at any time you don't understand my
 (20) question, please let me know and I will
 (21) rephrase it or have it repeated for you.

(22) However, if you provide an answer, I'm going to
 (23) assume you understood my question.

(24) If at any time I ask you for a
 (25) distance or a time, please provide me with an

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(1)

(2) approximation, but do not guess. If you need a
 (3) break for any reason, we will be happy to
 (4) accommodate you with one caveat; if there is a
 (5) question pending, I'm going to ask you to
 (6) answer that question before we take a break.

(7) Do you understand these

(8) instructions?

(9) A. Yes.

(10) (Whereupon, an off-the-record
 (11) discussion was held.)

(12) Q. How long have you lived at the
 (13) address you provided?

(14) A. Lived there full-time or owned the
 (15) house?

(16) Q. Why don't we say owned the house.

(17) A. I think I've owned the house about
 (18) three years, I'm not sure. My memory isn't
 (19) good, but I owned the house before I lived in
 (20) it full-time, and I think I've lived in it
 (21) full-time since December 23rd of last year,
 (22) which would be '06.

(23) Q. Do you currently own any other
 (24) residences?

(25) A. No.

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WITNESS: J. H. WEISS

XMAX(191/11)

(15) A. Yes.
 (16) MR. O'SHAUGHNESSY: I'm going to
 (17) leave a line in the transcript for that
 (18) person's name. To the extent you can
 (19) remember, with your attorney's
 (20) permission, you can fill that in.

(21)
 (22) THE WITNESS: I mean I used to get
 (23) assistants from college. So, I'd get
 (24) one for a few months, one for a few
 (25) months.

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(1)
 (2) Q. So, these part-time assistants, did
 (3) they have any longevity with your company?

(4) A. Not at all.

(5) Q. How about the bookkeeper?

(6) A. Well, the most recent bookkeeper –
 (7) a few years, and before that – my memory –
 (8) these are the Lego blocks that are missing.

(9) Q. What is the bookkeeper's name, if
 (10) you remember?

(11) MS. CHIARAVALLOTTI: We can leave a
 (12) line in the transcript.

(13) A. Karen.

(14) MR. O'SHAUGHNESSY: With your
 (15) attorney's permission, we will leave a
 (16) blank for the last name, if you can
 (17) remember it.

(18)
 (19) Q. Was there anyone else who would
 (20) work either out of your home, your studio, or
 (21) any other location that would be employed by
 (22) your company?

(23) MS. CHIARAVALLOTTI: I don't know
 (24) that anyone did work out of her home.

(25) If you want to clarify if anyone worked

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(1)
 (2) out of her home: Who worked out of your
 (3) home?

(4) THE WITNESS: My assistant. I had
 (5) a cleaning person.

(6) Q. I'm only talking about people who
 (7) would work on-the-job duties we have been
 (8) discussing.

(9) A. The assistants, and they were
 (10) part-time and temporary.

(11) Q. Is it fair to say then, that the
 (12) vast majority of the duties were yours?

(13) A. Absolutely.

(14) Q. And that's what the client expected
 (15) from you?

(16) A. Absolutely. Everything I did was a
 (17) confidentiality situation.

(18) Q. Earlier you referenced that you had
 (19) some contracts that you had to cancel. Were
 (20) these written contracts?

(21) A. Well, I think they're letters. By
 (22) your standards as an attorney maybe you

(23) wouldn't view it as a contract.

(24) Q. Was it in writing?

(25) A. Yes. Well, most of them are. In

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(1)
 (2) media a lot of things are handshakes, but I
 (3) think a lot them were in writing, too.
 (4) Q. Would you have copies of those?
 (5) A. In boxes. I haven't unpacked from
 (6) my move. I don't know where anything is.
 (7) MR. O'SHAUGHNESSY: I'm going to
 (8) call for production of those contracts
 (9) for the last year or so.

(10) THE WITNESS: They're not going to
 (11) be the kind of contracts you're thinking
 (12) of.

(13) MR. O'SHAUGHNESSY: Contracts in
 (14) the broader sense. Letters, what you
 (15) would be paid, things like. I will
 (16) follow that up un writing.

(17) MS. CHIARAVALLOTTI: I would request
 (18) all of that in writing.

(19) THE WITNESS: You should look at my
 (20) tax records if you want to know who I've
 (21) been working for.

(22) MS. CHIARAVALLOTTI: Judy? Don't
 (23) answer anything that's not asked.

(24) Q. Did you also file personal tax
 (25) returns?

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(1)
 (2) A. I guess so. My CPA handled that.
 (3) Whatever was legal, he did.

(4) Q. Were you ever asked to sign any of
 (5) these documents, either corporate or otherwise?

(6) A. I'm sure I had to sign.

(7) MR. O'SHAUGHNESSY: I'm also going
 (8) to make a request for personal tax
 (9) records, to the extent they have them.

(10) MS. CHIARAVALLOTTI: I'm going to
 (11) object to personal tax records, it's
 (12) irrelevant.

(13) Q. Did you have to pay any monies to
 (14) get out of any contracts?

(15) A. Yes.

(16) Q. Did you make those payments?

(17) A. Yes.

(18) Q. Who did you pay to break a
 (19) contract?

(20) MS. CHIARAVALLOTTI: To be released
 (21) from the contract?

(22) Q. Yes.

(23) A. I believe the company was called –
 (24) the reason I hesitate on this is a lot of
 (25) companies have very, very much smaller

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(1)
 (2) companies for legal reasons, for certain

(3) projects. I believe the name of the company

(4) that I paid was called Healthy Directions, LLC.

BSA	DATE	WEISS vs CREEM	WITNESS: J. H. WEISS	XMAX(194/14)
(11) defer payment from, let's say 2004 to 2005, for (12) their reasons, and at the very end of every (13) year, he would see who was doing what and he (14) would make the best judgements for me.	(15) Q. You were talking about putting money away for, did you say pension or retirement?	(16) A. I had a pension plan. (17) Q. Were you required to take distributions from the plan by a specific date or time?	(18) A. I guess so, but I don't remember. (19) Q. Do you have an understanding, as you sit here today, how many years you intended to work?	(20) A. Yes. (21) Q. How many? (22) A. I thought I would be working at least until I was 62, full-time, more likely until I was 65, full-time, and I was aware that due to my nature as being sort of a – I don't like to say this because it sounds a little obnoxious but –
(23) Q. Did you have a plan as to when you intended on taking distributions, either for retirement or any other reason?	Page 61	MS. CHIARAVALLOTTI: Don't say it then.	(24) A. I have to sort of refer to the fact that there were not that many people who did what I do, and who had launched that many magazines. I would probably have worked into my 70's, so my plan was that I would probably have worked part-time until I was about 72.	(25) Q. If I were to pick up a magazine in the newsstand, would I see your name on it?
(26) A. No. (27) Q. Would I see your name on the inside	Page 62	(28) of the magazine at all?	(29) A. No. (30) Q. Were you given credit by anyone, other than the company that paid you for being involved with these magazines?	(31) A. To the companies that paid me, I was an important asset. And the public at large, they don't know about people like me. Even people like you don't know about people like me.
(32) Q. Did you receive any awards or accolades from your peers?		(33) Q. What sorts of awards?	(34) A. I gave them all to my clients.	(35) Q. Almost every award you can win in magazine promotion.
(36) A. I had a pension plan.		(37) Q. Can you give me an idea of what some of those are?	(38) A. There's certain awards called the John Capeles awards, I know I won a number of those, but I never kept my awards. I gave them to my clients that hired me.	(39) Q. What is the John Capeles award
(40) Q. Were you required to take distributions from the plan by a specific date or time?		(41) given for?	(42) A. Probably for promoting new magazines, but I don't remember.	Page 63
(43) A. I don't know.		(44) Q. Did you ever win any awards for design?	(45) A. No. I'm not specifically a designer. I'm an inventor. I'm a creator.	
(46) Q. Did you have a plan as to when you intended on taking distributions, either for retirement or any other reason?		(47) Q. Using your words, for inventing or creating, did you ever win any awards for that?	(48) A. I don't think there are awards for that; they go to freelancers.	
(49) A. Yes.		(50) Q. Approximately how many John Capeles awards have you won?	(51) Q. More or less than one?	
(52) Q. How many?		(53) A. More than one.	(54) Q. More or less than five?	
(55) A. I thought I would be working at least until I was 62, full-time, more likely until I was 65, full-time, and I was aware that due to my nature as being sort of a – I don't like to say this because it sounds a little obnoxious but –		(56) A. Of every award I've won, I can't remember the various ones, probably 20 or 30.	(57) Q. What was the last one that you won?	
(58) MS. CHIARAVALLOTTI: Don't say it then.		(59) Q. More or less than one?	(60) A. I don't know. I never submitted any of my work for an award. That's what kept the number down. The only reason I won any was that the client submitted it.	
(61) A. I have to sort of refer to the fact that there were not that many people who did what I do, and who had launched that many magazines. I would probably have worked into my 70's, so my plan was that I would probably have worked part-time until I was about 72.		(62) Q. Did you win any awards in the years from 2000 to 2006?	(63) A. I don't recall any.	Page 64
(64) Q. If I were to pick up a magazine in the newsstand, would I see your name on it?		(65) Q. If I were curious to find out award winners for a specific period of time, would there be a place I could look to find that?	(66) A. I don't know, because I didn't submit the stuff.	
(66) A. No.		(67) MS. CHIARAVALLOTTI: To the extent we can identify which clients' work that Judy did got the John Capeles award, we will attempt to put together a list. I didn't know about the award until now.	(68) Q. What is your height?	
(67) Q. Would I see your name on the inside		(69) So, I will investigate that. Go to clients' offices and photograph their walls.	(70) A. Five feet two.	
(68) of the magazine at all?		(71) Q. Your weight?	(72) A. 109.	
(69) A. No.		(73) Q. Did you weigh approximately 109 on the date of the accident?	(74) A. I don't think so.	
(70) Q. Were you given credit by anyone, other than the company that paid you for being involved with these magazines?		(75) Q. More or less?	(76) Page 65	
(71) A. To the companies that paid me, I was an important asset. And the public at large, they don't know about people like me. Even people like you don't know about people like me.				
(72) Q. Did you receive any awards or accolades from your peers?				
(73) A. I gave them all to my clients.				
(74) Q. Almost every award you can win in magazine promotion.				

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BSA

10/26/07 WEISS vs CREEM

WITNESS: J. H. WEISS

XMAX(195/15)

(1) (2) A. I would say more. (3) Q. How much more? (4) A. I would say 115. (5) Q. Were you involved in an automobile accident that we're discussing today? (6) A. Yes. (7) Q. When was that accident? (8) A. September 18, 2006. (9) Q. What was the day of the week? (10) A. I don't know. (11) Q. Was it a weekday, weekend? (12) A. Weekday. (13) Q. Early part of the week, middle part, end of the week? (14) A. It was early, I think. (15) Q. What was the time of the accident? (16) A. I think it might have been about 1:00 p.m.

(20) MS. CHIARAVALLOTTI: Is that a question or an answer?

(22) THE WITNESS: I don't know.

(23) MS. CHIARAVALLOTTI: Well, then you have to say -

(25) A. I think it was about 1:00 p.m.

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(1) (2) Q. What was the location of accident? (3) A. I don't know what the location was, but it was on a road, I guess, somewhere near New Paltz and Kingston, or in between. (4) Q. Were you a passenger or driver? (5) A. Passenger. (6) Q. Whose car was it? (7) A. That's a good question. I thought I was driving in a car that belonged to my realtor, who I just met that day who I knew for about 20 minutes. Her name was Betty Olson, I think, but I now wonder if it was her car, or maybe her husband's car. (8) MS. CHIARAVALLOTTI: Don't speculate. You thought it was her car, that's the end. (9) Q. What makes you believe that it may not have been her car? (10) A. Because I saw the license plate yesterday. (11) Q. What about the license plate makes you believe it's not her car? (12) A. It's the name of her husband's company.

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(1) (2) Q. Do you recall the license plate? (3) A. No. I don't recall it. You showed me a picture. (4) MS. CHIARAVALLOTTI: I showed her a picture of the vehicle and I asked, "Is this Betty's car?" And then she got mixed up with the license plate, but she

(9) remembered it was her husband's company.

(10) Q. What kind of car were you in?

(11) A. I wouldn't know. I mean, I know

(12) because she showed me the picture yesterday,

(13) but I wouldn't know. I didn't know. In fact,

(14) I was really surprised when I saw it.

(15) Q. Did you prepare for your deposition

(16) in any way today?

(17) A. No.

(18) Q. Did you prepare with your Counsel

(19) in any way by reviewing any documents or

(20) photographs?

(21) A. Today, no.

(22) Q. Did you prepare for the deposition

(23) by reviewing any documents or photographs

(24) yesterday?

(25) A. I saw photographs yesterday of the

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(1) (2) accident.

(3) MS. CHIARAVALLOTTI: The black and whites attached to one of the rule 26 submissions.

(6) MR. O'SHAUGHNESSY: For the record, I believe that's the submission of DeSena and Sweeney.

(9) Q. Other than telling me what you and your attorney discussed, did you review any other documents or papers?

(12) A. No.

(13) Q. What color was the car that you

(14) were in?

(15) A. Well, because I saw it on the table, I can answer you. Just now I saw it, but I wouldn't know otherwise.

(18) Q. What color is it?

(19) A. Well, it appears to be red.

(20) MS. CHIARAVALLOTTI: There is a

(21) photograph right in front of Counsel

(22) that all of us can see with a red

(23) vehicle, so we're cheating a little bit.

(24) MR. O'SHAUGHNESSY: I'm going to turn these over.

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(1) (2) THE WITNESS: My point is, I don't know.

(4) Q. Where were you seated in this car?

(5) A. In the passenger seat next to the

(6) driver.

(7) Q. The front seat?

(8) A. Yes.

(9) Q. Can you describe the driver of that vehicle?

(11) A. Describe her in what way?

(12) MS. CHIARAVALLOTTI: Age, skin

(13) color.

(14) Q. Anything you can tell us.

(15) A. She's probably about my age, I

(16) think. She's about my height. She's heavy.